

APPENDIX W

MODEL
DETAILED STUDY COST-SHARING AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA

AND

(THE SPONSORING STATE)
FOR A STUDY OF AQUATIC PLANT CONTROL IN
(NAME OF STATE OR OTHER AREA)

THIS AGREEMENT, entered into this ____ day of ____, 19__, by and between the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), represented by the Contracting Officer executing this Agreement, and the (SPONSORING STATE) (hereinafter referred to as the "Sponsor"), acting by and through (designated state agency).

WITNESSETH, THAT

WHEREAS, Section 104 of the Rivers and Harbors Act of 1958 (PL 85-500), codified as amended at 33 USC 610, authorizes a comprehensive program to provide for control of undesirable aquatic plants from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes; and

WHEREAS, the Government has conducted a preliminary study of aquatic plant control problems in the State of _____, pursuant to this authority, and has determined that further study in the nature of an "Aquatic Plant Control Detailed Study" (hereafter called the "Study") is required to fulfill the intent of the study authority and to complete the determination of the extent of the Federal interest in aquatic plant control in the State of _____; and

WHEREAS, the Secretary of the Army is authorized to receive cash contributions of funds tendered by non-Federal interests and to expend such contributions on studies pursuant to Section 104 of PL 85-500, as amended, and Section 105 of PL 99-662; and

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsor and the Government both understand that entering into this Agreement in no way obligates either party to implement a project and that whether a project is supported for authorization and budgeted for implementation depends upon the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration; and

WHEREAS, the Water Resources Development Act of 1986 (PL 99-662) specifies the cost sharing requirements applicable to the Study;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

a. The term "Study" shall mean all planning, engineering, and design work to be completed prior to initiation of the aquatic plant control project pursuant to the requirements of ER 1130-2-412 and other applicable guidance.

b. The term "Study Cost" shall mean all disbursements by the Government pursuant to this Agreement, whether from Federal appropriations or from funds made available to the Government by the Sponsor, and all Negotiated Costs of work performed by or contracted for by the Sponsor pursuant to this Agreement. Such costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; contracts with third parties, including termination or suspension charges; and any termination or suspension costs associated with this Agreement.

c. The term "Study Period" shall mean the time period for conducting the Study commencing with the execution of this Agreement and ending with a determination: of insufficient need; that a Federal interest does not exist; or of approval of the DSR by Office of the Assistant Secretary of the Army (Civil Works).

d. The term "Negotiated Cost" is the cost of a work item to be accomplished by the sponsor as in-kind services as specified in the Initial Project Management Plan incorporated herein and which is acceptable to both parties.

e. The term "Contracting Officer" shall mean the Commander of the U.S. Army Engineer District, _____, or his designee.

f. The term "fiscal year" (FY) shall mean the fiscal year of the Federal Government (October 1 through September 30 of the following calendar year).

ARTICLE II - OBLIGATIONS OF PARTIES

a. The Sponsor and the Government, using funds contributed by the Sponsor and appropriated by the Congress, shall expeditiously prosecute and complete the Study, currently estimated to be completed in __ months from the date of this Agreement, substantially in compliance with Article III herein and in conformance with applicable Federal and state laws and regulations, the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, and mutually acceptable standards of engineering practice.

b. The Government and the Sponsor shall each contribute, in cash and in-kind services, fifty (50) percent of all Study Costs, for which the total cost is currently estimated to be \$_____, as specified in Article IV herein; provided, that the sponsor may, consistent with applicable Federal statutes and regulations, contribute up to 25 percent of the Study Costs as in-

kind services; provided further, that the Government shall not obligate any cash contribution by the Sponsor toward Study Costs until such cash contribution has actually been made available to it by the Sponsor.

c. No Federal funds may be used to meet the Sponsor share of Study Costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified by the granting agency.

d. The award of any contract with a third party for services in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award of any contract by the Sponsor with a third party for services in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal statutes and regulations. The Government will have the opportunity to review and comment on all contracts and modifications which the sponsor negotiates and awards in furtherance of this agreement, including work to be done by any local unit or other designee of the state.

e. The Government and the Sponsor shall each endeavor to assign the necessary resources to provide for the prompt and proper execution of the Study and shall, within the limits of law and regulation, conduct the study with maximum flexibility as directed by the Executive Committee established by Article V, herein.

f. The Government shall not continue with the Study when it becomes evident that there is no solution in which there is a Federal interest or which is not in accord with budget priorities unless the Sponsor wishes to continue under the terms of this Agreement and the Department of the Army grants an exception. If a study is discontinued, it shall be concluded according to Article XII and all data and information shall be made available to both parties.

g. The Sponsor may wish to conclude the Study if it determines that there is no solution in which it has an interest or which is not in accord with its current policies and budget priorities. When such a case exists the Study shall be concluded according to Article XII and all data and information shall be made available to both parties.

ARTICLE III - INITIAL PROJECT MANAGEMENT PLAN

Appendix A, the Initial Project Management Plan (IPMP), is hereby incorporated into this Agreement. The parties to this Agreement shall substantially comply with the IPMP in prosecuting work on this Study. The IPMP will negotiate the scope and schedule of study services to be accomplished and the costs of in-kind services. The following modifications, to be approved by the Executive Committee (see Article V), shall require an amendment to this Agreement:

(1) any modification which increases the total Study Costs by more than (percentage to be negotiated with 15% maximum) percent.

(2) any modification in the estimated cost of a Study work item or any obligation for a Study work item, which changes the total cost of that work item by more than (percent to be negotiated with 15% maximum) percent.

(3) any extension of the completion schedule for a Study work item of more than thirty (30) days; or

(4) any reassignment of work items between the Sponsor and the Government (see Appendix A).

ARTICLE IV - METHOD OF PAYMENT

a. The Government shall endeavor to obtain during each fiscal year the appropriation for that fiscal year at least in the amounts specified in the IPMP incorporated herein. Subject to the enactment of Federal appropriations and the allotment of funds to the Contracting Officer, the Government shall then fund the Study at least in the amounts specified in the IPMP.

b. The Sponsor shall endeavor to obtain during each fiscal year the cash contribution for the fiscal year at least in the amounts specified in the IPMP incorporated herein and, once the funds are obtained, will make such funds available to the Government. The Government shall withdraw and disburse funds made available by the Sponsor subject to the provisions of this Agreement.

c. Funds made available by the Sponsor to the Government and not disbursed by the Government within a Government fiscal year shall be carried over and applied to the cash contribution for the succeeding Government fiscal year; provided, that upon study termination any excess cash contribution shall be reimbursed to the Sponsor after a final accounting, subject to the availability of appropriations, as specified in Article XII herein.

d. Should either party fail to obtain funds sufficient to make obligations or cash contributions or to incur Study Costs in accordance with the schedule included in the IPMP incorporated herein, it shall at once notify the Executive Committee established under Article V herein. The Executive Committee shall determine if the Agreement should be amended, suspended or terminated under Article XII herein.

ARTICLE V - MANAGEMENT AND COORDINATION

a. Overall study management shall be the responsibility of an Executive Committee. Membership on the Executive Committee shall normally include the following district personnel and their counterparts in the non-Federal sponsor: District Commander; Chief, Planning Division; and Chief, Operations Division. The Executive Committee will meet in regularly scheduled annual meetings. Interim meetings of the Committee will be scheduled as necessary to resolve conflicts or policy issues.

b. To provide for consistent and effective communication and prosecution of the items in the IPMP, the Executive Committee shall appoint representatives to serve on a Study Management Team.

c. The District Study Manager will be responsible for the day-to-day study management. She/he will maintain close coordination with the Federal and non-Federal members of the Study Management Team to ensure timely prosecution of the study in compliance with this agreement. She/he will maintain a written record of all telephone conversations and meetings with the other members of the team.

d. The District Study Manager will, with input, review, and approval from the remainder of the Study Management Team, prepare quarterly progress reports for the Executive Committee.

The quarterly reports will delineate the progress of all work items and document all unresolved conflicts or policy issues requiring resolution by the Executive Committee. The quarterly reports will also report any modifications to the Scope of Study requiring amendments to this agreement.

e. The Study Management Team will coordinate on all matters relating to prosecution of the Study and compliance with this Agreement, including cost estimates, schedules, prosecution of work elements, financial transactions and recommendations to the Executive Committee for termination, suspension or amendment to this Agreement.

f. The Study Management Team will prepare periodic reports on the progress of all work items for the Executive Committee.

ARTICLE VI - DISPUTES

a. The Study Management Team shall endeavor in good faith to negotiate the resolution of conflicts. Any dispute arising under this Agreement not disposed of by mutual consent shall be referred to the Executive Committee. The Executive Committee shall resolve such conflicts or determine a mutually agreeable process for reaching resolution or for termination under Article XII herein.

b. Pending final decision of a dispute hereunder, or pending suspension or termination of this Agreement under Article XII herein, the parties hereto shall proceed diligently with the performance of this Agreement.

ARTICLE VII - MAINTENANCE OF RECORDS

The Government and the Sponsor shall keep books, records, documents and other evidence pertaining to study costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study costs. The Government and the Sponsor shall maintain such books, records, documents and other evidence for inspection and audit by authorized representatives of the parties to this Agreement. Such material shall remain available for review for a period of three (3) years following the termination of this Agreement.

ARTICLE VIII - RELATIONSHIP OF PARTIES

a. The parties to this Agreement shall act in an independent capacity in the performance of their respective functions under this Agreement, and neither party will be considered the officer, agent, or employee of the other.

b. To the extent permitted by applicable law, any reports, documents, data, findings, conclusions, or recommendations pertaining to the Study will not be released outside the Executive Committee or the Study Management Team; nor will they be represented as presenting the views of either party unless both Parties shall indicate agreement thereto in writing.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Sponsor agrees to comply with all applicable Federal and state laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964 (PL 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, CFR, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XI - COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the agreement or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XII - TERMINATION OR SUSPENSION

a. This Agreement shall terminate at the completion of the Study Period; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement without penalty.

b. Within ninety (90) days upon termination of this Agreement the Study Management Team shall prepare a final accounting of Study Costs, which will display disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for Negotiated Costs of the Sponsor. Subject to the availability of appropriations, within thirty (30) days thereafter the Government shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over fifty (50) percent of total Study Costs. Within thirty (30) days of the final accounting, the Sponsor shall provide the Government with any cash contributions required so that the total Sponsor share is fifty (50) percent of total Study Costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

STUDY SPONSOR

BY _____
Colonel, Corps of Engineers
District Engineer
Contracting Officer

BY _____
(Title)

Appendix A - Initial Project Management Plan

INITIAL PROJECT MANAGEMENT PLAN
FOR A
MODEL
DETAILED STUDY COST-SHARING AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
(THE SPONSORING STATE)
FOR A STUDY OF AQUATIC PLANT CONTROL IN
(NAME OF STATE OR OTHER AREA)

a. The Initial Project Management Plan (hereinafter referred to as the "Plan") documents the plan for joint Federal and non-Federal efforts to conduct a feasibility study. The study will be conducted in sufficient detail to provide a basis for a recommendation (favorable or unfavorable) concerning implementation of aquatic plant control activities for name of aquatic plant(s) in the waters of the State of _____. The Plan will establish the negotiated costs of in-kind services, by either contract or in-house labor, and estimates of both the total study phase cost and the respective Federal and non-Federal share. The Plan will control the allocation of dollars (effort) among the tasks and assure that all interests are given appropriate attention during the conduct of the study. Additionally, the Plan will address the following items:

- (1) The work items, schedule, and responsibility for accomplishment.
- (2) The estimated cost of work items, including the negotiated cost of work items to be accomplished by the state, or its assigns, as in-kind services.
- (3) Criteria to assess the adequacy of completed work items, including appropriate references to Corps of Engineers guidance in support of work items for quality assurance purposes.
- (4) The specific coordination mechanism between the Corps of Engineers and the cooperating state agency.
- (5) Procedures for reviewing and accepting the work of both parties to this agreement.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid by any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Sponsor